

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-265, DRB 97-401, 98-001
and 98-246

IN THE MATTER OF :
 :
ROBERT B. CLARK :
 :
AN ATTORNEY AT LAW :
 :

Decision
Default [R. 1:20-4(f)]

Decided: March 3, 1999

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

Pursuant to R. 1:20-4(f), the District VB, VC and VII Ethics Committees ("DEC") certified the records in these matters directly to the Board for the imposition of discipline, following respondent's failures to file answers to the formal ethics complaints.

Respondent was admitted to the New Jersey bar in 1979. His ethics history is extensive. On May 7, 1990, he was publicly reprimanded for lack of diligence and failure to communicate in four matters and failure to return a retainer in a fifth matter. In re Clark, 118 N.J. 563 (1990). He was again publicly reprimanded on October 5, 1995, this time for negligence and misrepresentations in an employment matter. In re Clark, 142 N.J. 475 (1995). That same day, respondent was temporarily suspended for failure to pay a \$10,000 fee arbitration award to a client. In re Clark, 142 N.J. 475 (1995). On February 24, 1998, respondent was suspended for three months for violations in two matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to return a file and a \$15,000 fee and failure to cooperate with disciplinary authorities. In re Clark, 152 N.J. 461 (1998).

Docket No. DRB 97-265 (The Villaroel Matter)

On September 26, 1996, the DEC served respondent with the complaint by regular and certified mail sent to his last known office address, 604 Central Avenue, East Orange, New Jersey 07018. Both the certified mail and the regular mail were returned stamped "moved, left no address." On November 25, 1996, the DEC mailed a second letter to respondent by regular and certified mail to the same address. The letter advised respondent that, if he did not reply within five days, he could be temporarily suspended from the practice of law. The certified mail was returned stamped "addressee unknown" and the regular mail was returned

stamped "attempted not known." Thereafter, on April 7, 1997, the DEC published a notice in New Jersey Lawyer advising respondent of the ethics complaint and giving him twenty-one days to file an answer. Respondent did not file an answer to the ethics complaint.

The complaint alleged that respondent was retained by Allan Villaroel for representation in a bankruptcy proceeding. Respondent failed to maintain any contact with Villaroel and failed to reply to "numerous" telephone inquiries made by Villaroel. In fact, for several months respondent's office was closed during normal business hours, with no notice posted about his whereabouts. Additionally, respondent failed to reply to a bankruptcy court notice that would have reduced Villaroel's mortgage payments. Because Villaroel was unaware of the notice, he failed to make the payments and lost his property in a foreclosure proceeding.

The complaint charged respondent with gross neglect, in violation of RPC 1.1(a), pattern of neglect, in violation of RPC 1.1(b), lack of diligence, in violation of RPC 1.3 and failure to communicate, in violation of RPC 1.4. Additionally, because respondent did not reply to any of the DEC investigator's requests for information and did not file an answer, the complaint charged him with failure to cooperate with the disciplinary authorities in violation of RPC 8.1(b) [cited as a violation of R. 1:20-3(g)(4)].

Docket No. DRB 97-401 (The Harris and Hughes matters)

On April 1, 1997, the DEC mailed a copy of the complaint to respondent at his last

known address, 604 Central Avenue, Suite 12, East Orange, New Jersey 07018, by both certified and regular mail. The certified mail was returned marked "unclaimed." The regular mail was returned with a notation that the forwarding order had expired. Thereafter, on August 25, 1997, the DEC published a notice in the New Jersey Lawyer notifying respondent that a formal ethics complaint had been filed against him and that he had twenty-one days from the date of publication to file an answer. Respondent did not file an answer to the complaint.

The first count of the complaint alleged that James D. Harris retained respondent to represent him in a personal injury action. Although respondent obtained a default, after he filed a motion to enter default he did no further work on the case. Thereafter, respondent failed to keep Harris informed about developments in the case, despite Harris' numerous attempts to obtain information about this matter. Respondent was charged with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 1.5 (improper fees).

The second count of the complaint charged that William E. Hughes retained respondent to represent him in the defense of a writ of execution obtained against him. Pursuant to the retainer agreement, Hughes paid respondent \$1,500, of which \$500 was deemed non-refundable. Thereafter, Hughes delivered pertinent records to respondent pertaining to his defense. Subsequently, Hughes' attempts to obtain information about the case were unsuccessful. Hughes ultimately retained another attorney to defend him in the

matter.

Respondent was charged with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 1.5(a) (improper fees). Additionally, the complaint charged respondent with a violation of R. 1:20-3(g)(4), more properly RPC 8.1(b), for his failure to cooperate with the DEC.

Docket No. DRB 98-001 (The Smith Matter)

Notice of the filing of the complaint in this matter was published on October 20 and October 27, 1997 in the New Jersey Lawyer and the Star Ledger, respectively. In addition, notice of the Board hearing was published in both the New Jersey Lawyer and the New Jersey Law Journal. Respondent did not file an answer to the complaint.

In April 1989, respondent was retained by Herbert L. Smith for legal consultation. Smith was in jail following a guilty verdict for felony murder, attempted kidnapping, robbery and similar charges. The felony murder conviction was reversed and remanded in 1986. Following the remand, Smith entered a guilty plea to death by auto. Thereafter, in March 1993, Smith moved to have the entire sentence reconsidered. Smith, who acted pro se, was not successful. In March 1995 respondent asked for and was granted a continuance in the Smith post-conviction matters. A post-conviction relief hearing was scheduled for July 7, 1995. Respondent failed to appear at that hearing. At that time, the court issued an order requesting respondent to reimburse the State of New Jersey for the cost of transporting his

client to the courthouse on the day respondent failed to appear. That fine has not been paid. Ultimately, respondent's client complained of respondent's conduct directly to the court.

Respondent was charged with a pattern of neglect, in violation of RPC 1.1(b).

Docket No. DRB 98-246 (The Green Matter)

On April 3, 1998, the DEC served a copy of the complaint and cover letter on respondent in South Orange, New Jersey and Washington, D.C. by both certified and regular mail. According to the investigator, the South Orange address was respondent's last known address and the Washington D.C. address was respondent's new home address. In addition, the investigator claimed that he spoke by telephone with respondent and informed him of the grievance. In fact, respondent himself gave the investigator his Washington, D.C. address during that conversation. Apparently, respondent has moved to Washington, D.C. and has given up the practice of law.

The certified mail sent to respondent's Washington address was returned to the DEC marked "unclaimed"; the corresponding regular mail was not returned. The certified mail sent to respondent's New Jersey address was returned marked "undeliverable as addressed, forwarding order expired." The regular mail sent to the New Jersey address was returned to the DEC, indicating that it too was undeliverable as addressed and unable to be forwarded. On May 11, 1998, the DEC sent a second letter to respondent at his Washington address only. This letter, sent by regular and certified mail, advised respondent that the DEC could seek

his temporary suspension if it did not receive an answer within five days of the letter. Neither the certified mail nor the regular mail was returned to the DEC. As of June 3, 1998, the date of the certification, respondent had not filed an answer. Notice of the Board hearing was published in New Jersey Lawyer on August 31, 1998.

According to the complaint, Pauline Green retained respondent on May 18, 1995 to represent her and her husband in connection with a real estate closing. At that time, Green gave respondent a retainer check for \$2,000. When Green discovered that respondent had not done any work on the matter, she was forced to retain a new attorney. The new attorney wrote to respondent, requesting Green's file and the retainer. Respondent did not return the file or the money; in fact, he did not reply at all.

The complaint further alleged that, following a hearing on February 27, 1997, the district fee arbitration committee ordered respondent to refund \$2,000 to Green. Respondent did not appear at the hearing and did not comply with the order to return the money to Green. In addition, respondent was advised of the grievance against him both verbally and by regular and certified mail and failed to formally reply to the investigator's request for information.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate), mistakenly cited in the complaint as "RPC 1.4(2)", and RPC 1.5(a) (unreasonable fee).

* * *

Service of process was proper in each case. Where respondent was unavailable for service by mail, service by publication was made. Pursuant to R. 1:20-4(f)(1), the allegations of the complaint are, therefore, deemed admitted.

In the Villaroel matter, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b). Respondent's negligence was gross in that it caused his client to lose property in a foreclosure proceeding. This same act also shows that respondent failed to act diligently on his client's behalf. Moreover, Villaroel made numerous attempts to contact respondent and all went unanswered. Respondent's failure to reply to the investigator's requests for information and failure to file an answer to the complaint constitute a prima facie case of failure to cooperate with the ethics authorities. However, because there is only one charge of negligence, the charge of RPC 1.1(b) was dismissed.

In the Harris and Hughes matters, respondent grossly neglected both client's matters, failed to communicate with either client, exhibited a lack of diligence and failed to cooperate with the ethics authorities. Additionally, respondent failed to return Hughes' unearned retainer. Accordingly, the Board determined that respondent violated RPC 1.1(a) in both matters, RPC 1.3 in both matters, RPC 1.4 in both matters and RPC 1.5(a) in the Hughes matter. The Board also determined that respondent's failure to cooperate with the disciplinary authorities violated RPC 8.1(b). However, the complaint contains no facts to support a finding that respondent violated RPC 1.5 in the Harris matter. Accordingly, the

Board dismissed that charge.

In the Smith matter, the Board determined that respondent should have been charged with a violation of RPC 1.1(a), instead of RPC 1.1(b), as the case involved only one instance of neglect. The Board found that respondent violated RPC 1.1(a) in that matter.

In the Green matter, respondent accepted a retainer from a client and then failed to do any work. Moreover, respondent failed to either comply with or reply to his client's new attorney's requests for the file and the retainer. This behavior constituted both a failure to communicate and a failure to return a retainer. Although the complaint charged a violation of RPC 1.5(a) (unreasonable fee), a finding of a violation of RPC 1.16(d) (failure to return an unearned retainer) is more appropriate. Thus, the Board found violations of RPC 1.1(a), RPC 1.4(a) and RPC 1.16(d).

In addition, the complaint alleged that, although respondent was advised of the grievance against him both verbally and by regular and certified mail, he failed to formally reply to the allegations against him. Such behavior constituted a failure to cooperate with the disciplinary authorities, in violation of RPC 8.1(b). When a complaint fails to charge a specific ethics violation, but the facts in the record are sufficient to put respondent on notice of that violation, the allegations may be deemed amended to conform to the proofs. In re Logan, 70 N.J. 223, 232 (1976). Accordingly, the Board found that respondent violated RPC 8.1(b).

In summary, throughout the matters encompassed in this decision, the Board found

five violations of RPC 1.1(a), four violations of RPC 1.4(a), three violations of both RPC 1.3 and RPC 8.1(b) and one violation of RPC 1.5(a) and RPC 1.16(d).

Respondent's ethics history is replete with violations and includes at least eighteen grievances filed against him at the district level over the past twelve years. Included in the discipline that has resulted from his behavior are two public reprimands, a temporary suspension and a three-month suspension. Respondent's misconduct in the matters now before the Board exhibited a substantially similar behavior pattern. Moreover, in all four of these cases, respondent ignored the disciplinary system and forced the matters to proceed as defaults.

Although respondent has made repeated appearances before the Board, his conduct as an attorney has not improved. Additionally, respondent indicated to the DEC investigator, in the Green matter, that he had given up the practice of law. Not only has respondent chosen to leave the practice of law, he has chosen to leave all of his professional responsibilities behind as well. This type of behavior cannot be tolerated. Substantial discipline is, therefore, warranted.

As the Court previously remarked in dealing with repetitive unethical behavior:

These improprieties standing alone are extremely serious and would require at the least suspension for a lengthy term. But the pattern is disturbing. The incidents demonstrate an unwillingness or inability to cope with the manifest requirements of a competent practice. We have excused such neglect in the case of young or inexperienced practitioners. . . . But respondent was neither young nor inexperienced. His deficiencies were chronic, persistent, not clearly attributable to

identifiable events that overwhelmed his will or comprehension. . . . '[R]espondent's conduct reflects a lack of awareness of the degree of professionalism expected of every member of the bar.' In re Katz, 90 N.J. 272, 284 (1982).

[In re Goldstein, 97 N.J. 545, 548 (1984)]

The Court held that disbarment was the appropriate sanction for Goldstein, who, in eleven instances, failed to either perform any work or competently perform work and then misrepresented the status of the actions to his clients.

Disbarment was also imposed in In re Spagnoli, 115 N.J. 504 (1989), where the attorney demonstrated a pattern of taking fees from clients without intending to perform work in their behalf:

[I]t is clear that respondent took fees from his clients while never intending to represent them. When neglect and negligence rise to this level, they take on characteristics of fraud. The frequency and repetitious pattern of these violations, involving fourteen incidents, in three years, reflects a practice by respondent of accepting retainers without ever intending to act on behalf of his clients. . . . Respondent falsely represented to clients that he would assume responsibility for their representation, but did nothing in their behalf. . . Respondent did not simply fail to return clients' files, he refused to do so.

[Id. at 518-19 (1989)]

Here, respondent has spent the past decade displaying his pattern of unethical behavior. He has consistently taken client's retainers without any intent to perform any work, refused to communicate with his clients and refused to refund the unearned retainers; he has repeatedly ignored the fee arbitration process; he has repeatedly ignored requests by

investigators for information; and he has repeatedly refused to answer ethics complaints. Respondent is neither young nor inexperienced. He failed to exhibit the bare minimum of professionalism required of every member of the bar, and his misconduct undermined his numerous clients and the public's confidence in the legal profession.

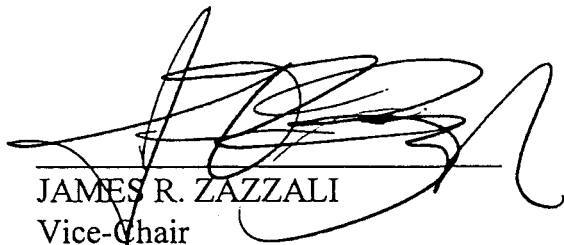
In short, for respondent's abandonment of his clients, his pattern of taking retainers without any intention to work on their matters and his extreme indifference to the disciplinary system, a five-member majority of the Board determined to recommend respondent's disbarment. Four members voted to suspend respondent for a period of three years, conditioning his reinstatement on proof that he refunded the \$10,000 fee that led to his temporary suspension in 1995.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: _____

3-3-99

By: _____


JAMES R. ZAZZALI
Vice-Chair
Disciplinary Review Board

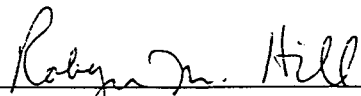
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert B. Clark
Docket Nos. DRB 97-265, DRB 97-401, DRB 98-001 & DRB 98-246

Decided: March 3, 1999

Disposition: Disbar

Members	Disbar	Three-Year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Zazzali	x						
Brody	x						
Cole		x					
Lolla	x						
Maudsley	x						
Peterson		x					
Schwartz	x						
Thompson		x					
Total:	5	4					

 3/16/99
Robyn M. Hill
Chief Counsel